
By: **Delegates Finifter and Hixson**

Introduced and read first time: February 22, 2001

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Schools - Individuals with Disabilities - Accessibility**

3 FOR the purpose of requiring certain regulations of the Department of Housing and
4 Community Development to require that schools in the State be accessible to
5 individuals with disabilities by a certain date; requiring a county board of
6 education, a private school, a governing board of an institution of higher
7 education, and the State Board of Education to make a certain determination
8 and develop a certain plan regarding accessibility for individuals with
9 disabilities; establishing penalties for a violation of this Act; providing for the
10 enforcement and interpretation of this Act; defining certain terms; and
11 generally relating to the accessibility of certain schools to individuals with
12 disabilities.

13 BY repealing and reenacting, with amendments,
14 Article 83B - Department of Housing and Community Development
15 Section 6-102
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 2000 Supplement)

18 BY adding to
19 Article 83B - Department of Housing and Community Development
20 Section 6-102.1
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 2000 Supplement)

23 **Preamble**

24 WHEREAS, The State of Maryland has a responsibility to ensure that all
25 teachers, students, families, and other individuals with disabilities have full access to
26 all programs and services offered in educational facilities in Maryland; and

27 WHEREAS, The General Assembly is concerned that teachers, students,
28 families, and other individuals with disabilities have been denied access to programs
29 and services offered in educational facilities in Maryland; and

1 WHEREAS, The failure of all educational facilities in Maryland to provide full
2 access to all of their programs and services may violate Titles I, II, and III of the
3 federal Americans with Disabilities Act and Section 504 of the federal Rehabilitation
4 Act of 1973; and

5 WHEREAS, The failure of educational facilities in Maryland to provide full
6 access to all of their programs and services has been an ongoing and unresolved
7 problem for many years, and there is a legal and moral need to address the issue of
8 inaccessibility in educational facilities in a comprehensive and objective manner; now,
9 therefore,

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article 83B - Department of Housing and Community Development**

13 6-102.

14 (a) (1) (I) The Department, or an appropriate division of the Department,
15 shall promulgate and adopt a State building code for the purpose of developing rules
16 and regulations for making buildings and facilities accessible and usable by the
17 physically handicapped to the extent feasible.

18 (II) THE REGULATIONS ADOPTED UNDER SUBPARAGRAPH (I) OF
19 THIS PARAGRAPH SHALL REQUIRE ALL PROGRAMS AT, AND ESSENTIAL AREAS OF, A
20 PUBLIC OR PRIVATE SCHOOL OR AN INSTITUTE OF HIGHER EDUCATION TO BE
21 ACCESSIBLE TO PHYSICALLY HANDICAPPED INDIVIDUALS BY JANUARY 1, 2004.

22 (2) The rules and regulations shall be developed in conjunction with the
23 Governor's Committee for Employment of the Handicapped, the Maryland
24 Rehabilitation Association, and the Maryland Society of Architects.

25 (3) (i) In addition to any other penalty for a violation of the State
26 building code for the handicapped, the Secretary shall investigate to determine the
27 existence of any violation.

28 (ii) If the Secretary determines that a violation exists, the
29 Secretary may resolve any issue in the violation by informal methods of mediation
30 and conciliation.

31 (iii) In addition to the provisions of subparagraph (ii) of this
32 paragraph, the Secretary may institute in any court of competent jurisdiction in the
33 subdivision in which the violation occurred an action for equitable relief which may
34 include enjoining the construction, renovation, or occupancy of a building or facility
35 that violates the Maryland Building Code for the Handicapped or to seek other
36 appropriate relief from the violation.

37 (iv) Notwithstanding any other provision of this paragraph, the
38 Secretary may not seek any injunction under subparagraph (iii) of this paragraph

1 until 5 working days after the Secretary has sought to seek a resolution through
2 mediation and conciliation under subparagraph (ii) of this paragraph.

3 (4) The Attorney General is authorized to prosecute all civil cases arising
4 under this section which are referred to the Attorney General by the Secretary.

5 (b) (1) Enforcement of the Code shall be the responsibility of local
6 jurisdictions or any other public agencies having authority over buildings or facilities.

7 (2) The Department shall decide questions of interpretation of the Code
8 and authorize any waivers or exemptions under the Code.

9 (c) (1) Any person who willfully violates any provision of the Maryland
10 Building Code for the Handicapped adopted under subsection (a) of this section is
11 guilty of a misdemeanor and on conviction for each violation is subject to a fine not
12 exceeding \$500 for each day that the violation exists or imprisonment not exceeding 3
13 months, or both.

14 (2) Any penalty ordered under paragraph (1) of this subsection is in
15 addition to and is not a substitute for any other penalty ordered under a federal,
16 State, or local law.

17 (d) (1) Nothing in this section shall limit the authority of the Human
18 Relations Commission to enforce the provisions of Article 49B, § 22 of the Code.

19 (2) The Department shall cooperate with and provide technical
20 assistance to the Human Relations Commission concerning any action brought by the
21 Commission to enforce the provisions of Article 49B, § 22 of the Code.

22 6-102.1.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (2) "ACCESSIBLE" MEANS APPROACHABLE, ABLE TO BE ENTERED, OR
26 USABLE BY INDIVIDUALS WITH DISABILITIES.

27 (3) "ESSENTIAL AREA" INCLUDES A CLASSROOM, A BATHROOM, A
28 HEALTH FACILITY, A GYM, A THEATER, A LIBRARY, AN ATHLETIC FIELD, A ROAD,
29 WALK, OR PASSAGEWAY, OR OTHER COMMON PUBLIC GROUNDS.

30 (4) "PROGRAM" MEANS ANY ACTIVITY THAT TAKES PLACE IN A SCHOOL
31 INCLUDING BUT NOT LIMITED TO:

32 (I) CLASSROOM INSTRUCTION;

33 (II) AN ATHLETIC ACTIVITY;

34 (III) RECREATION;

35 (IV) MEETINGS;

1 (V) A COMMUNITY ACTIVITY; OR

2 (VI) ANY OTHER ACTIVITY OPEN TO THE GENERAL PUBLIC.

3 (5) "SCHOOL" INCLUDES A PUBLIC OR PRIVATE ELEMENTARY OR
4 SECONDARY SCHOOL, A SPECIAL EDUCATION SCHOOL, A SCHOOL OPERATED BY THE
5 STATE BOARD OF EDUCATION, OR AN INSTITUTE OF HIGHER EDUCATION.

6 (B) (1) EACH COUNTY BOARD OF EDUCATION, IN CONSULTATION WITH
7 INDIVIDUALS WITH DISABILITIES, SHALL DETERMINE BY OCTOBER 1, 2001 THE
8 EXTENT TO WHICH ALL PROGRAMS AT, AND ESSENTIAL AREAS OF, PUBLIC
9 ELEMENTARY OR SECONDARY SCHOOLS IN THE COUNTY ARE NOT ACCESSIBLE TO
10 INDIVIDUALS WITH DISABILITIES.

11 (2) EACH COUNTY BOARD OF EDUCATION, IN CONSULTATION WITH THE
12 STATE BOARD OF EDUCATION, INDIVIDUALS WITH DISABILITIES, AND OTHER
13 INTERESTED PARTIES, SHALL DEVELOP A PLAN BY JANUARY 1, 2002 TO MAKE ALL
14 PROGRAMS AT, AND ESSENTIAL AREAS OF, PUBLIC ELEMENTARY AND SECONDARY
15 SCHOOLS IN THE COUNTY ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES BY
16 JANUARY 1, 2004.

17 (C) (1) EACH PRIVATE SCHOOL, IN CONSULTATION WITH INDIVIDUALS
18 WITH DISABILITIES, SHALL DETERMINE BY OCTOBER 1, 2001 THE EXTENT TO WHICH
19 ALL PROGRAMS AT, AND ESSENTIAL AREAS OF, THE PRIVATE SCHOOL ARE NOT
20 ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES.

21 (2) EACH PRIVATE SCHOOL, IN CONSULTATION WITH THE STATE BOARD,
22 INDIVIDUALS WITH DISABILITIES, AND OTHER INTERESTED PARTIES, SHALL
23 DEVELOP BY JANUARY 1, 2002 A PLAN TO MAKE ALL PROGRAMS AT, AND ESSENTIAL
24 AREAS OF, THE PRIVATE SCHOOL ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES
25 BY JANUARY 1, 2004.

26 (D) (1) EACH GOVERNING BODY OF AN INSTITUTION OF HIGHER
27 EDUCATION, IN CONSULTATION WITH INDIVIDUALS WITH DISABILITIES, SHALL
28 DETERMINE BY OCTOBER 1, 2001 THE EXTENT TO WHICH ALL PROGRAMS AT, AND
29 ESSENTIAL AREAS OF, THE INSTITUTION OF HIGHER EDUCATION ARE NOT
30 ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES.

31 (2) EACH GOVERNING BODY OF AN INSTITUTION OF HIGHER
32 EDUCATION, IN CONSULTATION WITH THE HIGHER EDUCATION COMMISSION,
33 INDIVIDUALS WITH DISABILITIES, AND OTHER INTERESTED PARTIES, SHALL
34 DEVELOP BY JANUARY 1, 2002 A PLAN TO MAKE ALL PROGRAMS AT, AND ESSENTIAL
35 AREAS OF, THE INSTITUTION OF HIGHER EDUCATION ACCESSIBLE TO INDIVIDUALS
36 WITH DISABILITIES BY JANUARY 1, 2004.

37 (E) (1) THE STATE BOARD, IN CONSULTATION WITH INDIVIDUALS WITH
38 DISABILITIES, SHALL DETERMINE BY OCTOBER 1, 2001 THE EXTENT TO WHICH ALL
39 PROGRAMS AT, AND ESSENTIAL AREAS OF, SCHOOLS OPERATED BY THE STATE
40 BOARD ARE NOT ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES.

1 (2) THE STATE BOARD, IN CONSULTATION WITH INDIVIDUALS WITH
2 DISABILITIES AND OTHER INTERESTED PARTIES, SHALL DEVELOP BY JANUARY 1,
3 2002 A PLAN TO MAKE ALL PROGRAMS AT, AND ESSENTIAL AREAS OF, SCHOOLS
4 OPERATED BY THE STATE BOARD ACCESSIBLE TO INDIVIDUALS WITH DISABILITIES
5 BY JANUARY 1, 2004.

6 (F) A PERSON WHO WILLFULLY VIOLATES THIS SECTION IS SUBJECT TO THE
7 PENALTIES ESTABLISHED UNDER § 6-102 OF THIS SUBTITLE.

8 (G) (1) ENFORCEMENT OF THIS SECTION SHALL BE THE RESPONSIBILITY
9 OF A LOCAL JURISDICTION OR OTHER PUBLIC AGENCY THAT HAS AUTHORITY OVER
10 A SCHOOL BUILDING OR FACILITY.

11 (2) THE DEPARTMENT SHALL DECIDE QUESTIONS OF INTERPRETATION
12 OF THIS SECTION.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 June 1, 2001.